

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

RANDY DESHAWN DUNCAN,)
Petitioner,)
v.) CV 116-129
UNITED STATES OF AMERICA,) (Formerly CR 108-063)
Respondent.)

O R D E R

After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation, to which no objections have been filed. Accordingly, the Court **ADOPTS** as its opinion the Magistrate Judge's reasoning and conclusion in the Report and Recommendation that Petitioner is not entitled to relief because the decision in Johnson v. United States, 135 S. Ct. 2551 (2015), does not apply to Petitioner's conviction under 18 U.S.C. § 924(c). Consequently, the Court **DISMISSES** the motion filed pursuant to 28 U.S.C. § 2255. Because Johnson does not apply and the case is ripe for dismissal, the Court also **DISMISSES AS MOOT** Petitioner's motion to appoint counsel in the underlying criminal case. (CR 108-063, doc. no. 39.)

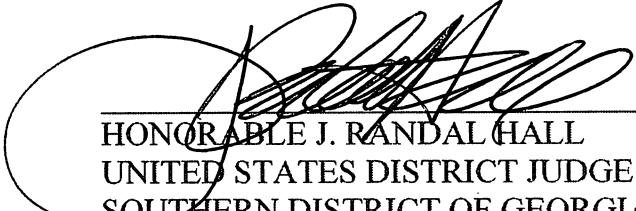
Further, a federal prisoner must obtain a certificate of appealability ("COA") before appealing the denial of his motion to vacate. This Court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rule 11(a) to the Rules Governing Section 2255 Proceedings. This Court should grant a COA only if the prisoner

makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

For the reasons set forth in the Report and Recommendation, and in consideration of the standards enunciated in Slack v. McDaniel, 529 U.S. 473, 482-84 (2000), Petitioner has failed to make the requisite showing. Accordingly, the Court **DENIES** a COA in this case.¹ Moreover, because there are no non-frivolous issues to raise on appeal, an appeal would not be taken in good faith. Accordingly, Petitioner is not entitled to appeal *in forma pauperis*. See 28 U.S.C. § 1915(a)(3).

Upon the foregoing, the Court **CLOSES** this civil action.

SO ORDERED this 19th day of October, 2016, at Augusta, Georgia.



HONORABLE J. RANDAL HALL
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA

¹“If the court denies a certificate, a party may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22.” Rule 11(a) to the Rules Governing Section 2255 Proceedings.